

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

May 28, 2010

Appeal

Name of Petitioner: Matthew W. Jones

Date of Filing: April 27, 2010

Case Number: TFA-0373

On April 27, 2010, Mr. John R. Osburn of Bullivant, Houser, Bailey, PC, filed an Appeal on behalf of Mr. Matthew W. Jones (Jones) from a determination that the Department of Energy's (DOE) Bonneville Power Administration (BPA) issued to him. The determination responded to a request for information Jones filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require BPA to release the responsive information it withheld from Jones.

The FOIA generally requires that documents held by the federal government be released to the public upon request. However, Congress has provided nine exemptions to the FOIA which set forth the types of information agencies are not required to release. Under the DOE's regulations, a document exempt from disclosure under the FOIA shall nonetheless be released to the public whenever the DOE determines that disclosure is not contrary to federal law and in the public interest. 10 C.F.R. § 1004.1.

I. Background

On January 22, 2010, Jones filed a FOIA request with BPA seeking the mailing list containing names and addresses of persons to whom BPA sent a copy of "U.S. Department of Energy-Bonneville Power Administration Permission to Enter Property Form Instruction Sheet" on or about January 13, 2010. *See* Determination Letter at 1. In a determination letter, BPA stated it conducted a search of its records and located documents responsive to Jones' request. BPA, however, withheld information in the responsive documents pursuant Exemption 6 of the FOIA. *Id.* On April 27, 2010, Jones filed the present Appeal with the Office of Hearings and Appeals (OHA). In his Appeal, Jones challenges the withholding of information under Exemption 6 of the FOIA. *See* Appeal Letter. Jones asks that the OHA direct BPA to release the withheld information.

II. Analysis

Exemption 6

In its determination letter, BPA withheld the names and home addresses of landowners who could be affected by the construction of a new transmission line from a responsive document under Exemption 6. Exemption 6 shields from disclosure “[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6); 10 C. F. R. § 1004.10(b)(6). The purpose of Exemption 6 is to “protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.” *Department of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982).

In order to determine whether information may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be invaded by the disclosure of the record. If no privacy interest is identified, the record may not be withheld pursuant to this exemption. *Ripskis v. Department of HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984) (*Ripskis*). Second, the agency must determine whether release of the document would further the public interest by shedding light on the operations and activities of the government. *See Hopkins v. Department of HUD*, 929 F.2d 81, 88 (2d Cir. 1991); *Department of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *FLRA v. Department of Treasury Financial Management Service*, 884 F.2d 1446, 1451 (D.C. Cir. 1989), *cert. denied*, 110 S. Ct. 864 (1990). Finally, the agency must weigh the privacy interests it has identified against the public interest in order to determine whether the release of the record would constitute a clearly unwarranted invasion of personal privacy. *Reporters Committee*, 489 U.S. at 762-770. *See generally Ripskis*, 746 F.2d at 3.

1. Privacy Interest

BPA determined that there was a privacy interest in the names and home addresses of landowners who live nearby a proposed transmission line. We have consistently determined “that there is a real and substantial threat to employees’ privacy if personal identifying information . . . were released.” *Painting & Drywall Work Preservation Fund, Inc.*, 15 DOE ¶ 80,115 at 80,537 (1987). *See also Painting & Drywall Work Preservation Fund, Inc.*, 16 DOE ¶ 80,102 at 80,504 (1987); *International Brotherhood of Electrical Workers*, 13 DOE ¶ 80,120 at 80,569 (1985); *International Brotherhood of Electrical Workers*, 13 DOE ¶ 80,104 at 80,519 (1985). Federal courts have also considered the privacy interests of individuals outside of the context of federal employees and have held that names and home addresses can be protected under Exemption 6. *See Bibles v. Or. Natural Desert Ass’n*, 519 U.S. 355, 356 (1997) (protecting mailing list or recipients of Bureau of Land Management publication). They have also held that specific lists may reveal sensitive information beyond the mere names and addresses of the individual found on the list. *Minnis v. USDA*, 737 F.2d 784, 787 (9th Cir. 1984) (“Disclosure would reveal not only the applicant’s names and addresses, but also their personal interests in water sports and the out-of-door.”). In this case, we believe that there is a significant privacy interest in the names and addresses of private homeowners who could be affected by a new transmission line. If this information were disclosed to the requester, the disclosure could “cause inevitable harassment and unwarranted solicitation.” *See* Determination Letter at 2. We have previously found the potential for harassment of individuals to be sufficient justification for withholding information under Exemption 6. *See, e.g., William Hyde*, 18 DOE ¶ 80,102 (1988).

These considerations govern our determination. We therefore find a real and substantial privacy interest in the names and addresses of the homeowners at issue.

2. Public Interest in Disclosure

Having established the existence of a privacy interest, the next step is to determine whether there is a public interest in disclosure. The Supreme Court has held that there is a public interest in disclosure of information that “sheds light on the operations and activities of the government.” *Reporters Committee*, 489 U.S. at 773. See *Marlene Flor*, 26 DOE ¶ 80,104 at 80,511 (1996). According to BPA, disclosure of the information withheld “could subject the individual to whom it pertains to unwanted communications that would intrude into his/her personal life . . . and will not reveal any aspects about the operations or activities of the Government.” Determination Letter at 1. The requester has the burden of establishing that disclosure would serve the public interest. *Flor*, 26 DOE at 80,511 (quoting *Carter v. Department of Commerce*, 830 F.2d 388 (D.C. Cir. 1987)). We fail to see how release of the names and addresses of private homeowners in the present case would inform the public about the operations and activities of Government. Accordingly, we find that there is little or no public interest in disclosure of the requested names and addresses.

3. Balancing the Interests

As stated earlier, there is a significant privacy interest in this information. In determining whether the disclosure of the identifying information could reasonably be expected to constitute an unwarranted invasion of personal privacy, courts have used a balancing test, weighing the privacy interests that would be infringed against the public interest in disclosure. *Reporters Committee*, 489 U.S. at 762 (1989). We agree with BPA and find that the minimal public interest here is far outweighed by the real and identifiable privacy interests of the private homeowners.

It Is Therefore Ordered That:

- (1) The Appeal filed by Matthew W. Jones on April 27, 2010, OHA Case No. TFA-0373, is hereby denied.
- (2) This is a final order of the Department of Energy of which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: May 28, 2010